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**DEPARTMENT OF COMMUNITY AND
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REGULATORY COMMISSION OF ALASKA

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August 5, 2000

Magalie Roman Salas
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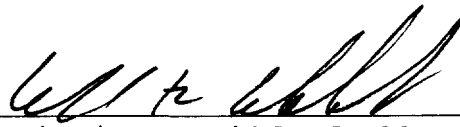
Re: CC Docket No. 96-45

Dear Ms. Salas:

Enclosed are an original and four copies of the Comments of the Regulatory Commission of Alaska in response to the CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, (FCC 00-208) released June 30, 2000.

Sincerely,

REGULATORY COMMISSION OF ALASKA



Commissioner Wilfred Abbott

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 96-45
Federal-State Joint Board on)	
Universal Service:)	
Promoting Deployment and)	
Subscribership in Unserved and)	
Underserved Areas, Including)	
Tribal and Insular Areas)	

**Comments of the
Regulatory Commission of Alaska**

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**Comments of the
Regulatory Commission of Alaska**

The Regulatory Commission of Alaska (RCA) commends and supports the commitment of the Federal Communications Commission (FCC) to promote universal service to unserved and underserved areas, including Native areas of the nation. Through the Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking (Tribal Order)¹ released June 30, 2000, the FCC has taken a substantial and important step towards ensuring that areas of the country with the greatest need are given an opportunity to receive affordable service. The RCA anticipates that upon implementation, the Tribal Order will improve the exceedingly low local service subscribership levels found in many areas of Alaska.

¹ CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order,

The RCA agrees with the FCC's conclusion in the Tribal Order that "consistent with the Act and the legislative history of section 214(e), state commissions have the primary responsibility for the designation of eligible telecommunications carriers [ETCs] under 214(e)(2)."² Furthermore, the RCA recognizes the FCC's authority under 214(e)(6) to designate ETC status in cases where the relevant state commission lacks, for whatever reason, the authority to perform such designations.³

For non-tribal lands, the FCC has stated it will not consider a section 214(e)(6) designation request unless the carrier has provided an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the ETC designation.

A key issue for the RCA, however, is how the FCC will apply its section 214(e)(6) authority over tribal land areas. The FCC stated it may resolve the threshold question of whether a carrier seeking eligibility designation for service provided on tribal lands is subject to the jurisdiction of the state commission. The FCC further concluded in the Tribal Order that a carrier seeking to serve tribal lands may go directly to the FCC for ETC designation without first seeking such designation from the state commission.

and Further Notice of Proposed Rulemaking, released June 30, 2000, FCC 00-208.

² Tribal Order at 93.

³ Tribal Order at 105.

Clearly the FCC's interpretation of 214(e)(6) may work well in states lacking jurisdiction to determine ETC status for carriers serving tribal lands. However, in Alaska, there is no jurisdictional gap in RCA authority that needs to be filled by the FCC. The RCA retains jurisdiction throughout Alaska, including areas defined by the FCC as "tribal lands".⁴ The Alaska Native Claims Settlement Act (ANCSA) as well as a Supreme Court ruling on this matter confirm the RCA's authority.⁵ The RCA has asserted jurisdiction and granted ETC status to all local facilities-based telecommunications carriers throughout Alaska, including those serving tribal lands. In no case was the RCA's jurisdictional authority over ETC status on tribal lands questioned. Furthermore,

⁴ The FCC has adopted as the definition of "tribal lands" the definition of "reservation" and "near reservation" used by the BIA in 25 CFR 20.1(r) and 20.1(v). The definition of "reservation" includes Alaska Native regions established under the Alaska Native Claims Settlement Act, which in turn includes areas neither owned or governed by tribes.

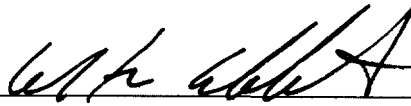
⁵ In 1971, Congress enacted ANCSA, a comprehensive statute designed to settle all Alaska Native land claims. See 85 Stat. 688, as amended, 43 U.S.C. § 1601 *et seq.* "In enacting ANCSA, Congress sought to end the sort of federal supervision over Indian affairs that had previously marked federal Indian policy." *Alaska v. Native Village of Venetie Tribal Government*, 118 S.Ct. 948, 951, (1998). ANCSA revoked all but one [Metlakatla Annette Island Reserve] of the Alaska reservations set aside for Native use and completely extinguished all aboriginal claims to Alaska land. 43 U.S.C. § 1618(a). In return, Congress transferred \$962.5 million in state and federal funds and 44 million acres of Alaska land to newly created private business corporations whose shareholders were required to be Alaska Natives. The ANCSA corporations received fee simple title to the transferred land without restrictions. A recent Supreme Court ruling has confirmed that the ANCSA lands are not "Indian Country" within the meaning of 18 U.S.C. § 1151(b). See 188 S.Ct. 948, 949. ANCSA ended federal superintendence over Native associated lands, with the intent to avoid a lengthy federal wardship or trusteeship. See 118 S.Ct. 948, 950. In regards to Metlakatla, the RCA has historically regulated the serving utility and granted the carrier ETC status. The village of Metlakatla did not contest the Commission's authority to grant ETC status.

the FCC has accepted the RCA's ETC designations and provides federal universal service support to the Alaska carriers.

To allow carriers in the future to come to the FCC for ETC designation when the RCA has already asserted and exercised ETC jurisdiction throughout Alaska would create confusion and delay and would appear to unreasonably place into question all past ETC designations made by the RCA. Both FCC and RCA resources would be unnecessarily expended if a carrier approached the FCC for ETC status given the RCA has already asserted jurisdiction over such designations. Carriers should not be given an opportunity to forum shop on this matter.

Since the RCA's authority is already well established and the FCC has accepted the RCA's designation of ETCs on tribal lands throughout Alaska, there appears to be no dispute of the RCA's authority in this area. It would be inappropriate for carriers seeking ETC status in Alaska to attempt to utilize the Tribal Order to bypass the RCA. The RCA requests the FCC clarify that it has recognized the RCA's authority to designate ETC status in Alaska and that carriers seeking ETC status in Alaska should first come to the RCA.

RESPECTFULLY SUBMITTED this 5th day of August, 2000.



Wilfred K. Abbott, Commissioner
Regulatory Commission of Alaska

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